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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

C-3363

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax No. 571-273-8300) on

September 22, 2008.

Barbara Cecere

Barbara Cecere

Application Number

10/765,737

Filed

January 27, 2004

First Named Inventor

Carl A. Reiser

Art Unit

1795

Examiner

O'Neill, Karie Amber

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record. Registration number 19,220

M.P. Williams

Signature

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Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

September 22, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below".

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Pre-Appeal Brief Request for Review  
Serial No. 10/765,737, filed January 27, 2004: Office Action dated 6/24/08

Argument

The last element of all independent claims (1, 2, 4 and 5) recites "disconnecting the electrical load from the fuel cell stack in the event that there is [or 'in response to'] no flow of gas from said flow fields toward ambient". The bottom of page 5 of the Office Action (O.A.) dated 12/20/07, and the 2<sup>nd</sup> sentence of page 5, O.A. dated 6/24/08 both state "**DeVaal does not disclose disconnecting the electrical load from the fuel cell in the event that there is no flow of gas from the flow fields toward ambient**" (Page 1, Response dated 2/22/08; "Response" hereafter).

The second from last element of all independent claims recite "sensing the direction of flow of gas" - claims 1 and 2 add "between said flow fields and ambient"; and claims 4 and 5 add "from said flow fields".

Paragraphs 4-6 of the Declaration of Carl Reiser, dated 2/18/08 ("Reiser, hereafter) establishes as unrefuted fact that the only monitoring of hydrogen in DeVaal is hydrogen concentration, in an environment with oxygen, for the purpose of avoiding explosions. See DeVaal 13:35-37. (Response, page 2, fourth paragraph).

Paragraph 11 of Reiser establishes as unrefuted fact that DeVaal does not monitor any flow at all. (Response, page 2, last sentence)

The second and third sentences of the first full paragraph on page 7 of the O.A. dated 6/24/08 ("Rejection", hereafter) appear to create a new maxim of the law. In the fourth sentence, the Examiner misstates DeVaal, 13:48-51: the "low concentration" in DeVaal is oxygen, not hydrogen. Then, the fifth sentence arbitrarily converts "low concentration" of DeVaal (id) to "low flow". The last two sentences appear to establish a second new maxim for rejecting a claim.

Both page 8 and the bottom half of page 11 plus all of page 12 of the Rejection establish that hydrogen flows to ambient; but the issue is sensing the direction of flow of hydrogen (along with disconnecting the load if no flow to ambient).

The last two paragraphs of page 13 show a misunderstanding of In re Keller and In re Merck & Co. If the rejection is "X in view of Y; X shows A and Y shows B", the rejection can most certainly be avoided by proving that "X does not show A".

In summary, deVaal does not disclose sensing the direction of flow; deVaal does not disclose (which the Examiner admits in the second sentence, page 5 of the Rejection) disconnecting the electrical load in the event that there is no flow.

Claims 1, 2, 4 and 5 are therefore not anticipated by deVaal and claims 1 and 4 are therefore not obvious over deVaal. Claim 3 is patentable as depending from claim 2.

Respectfully submitted,



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